

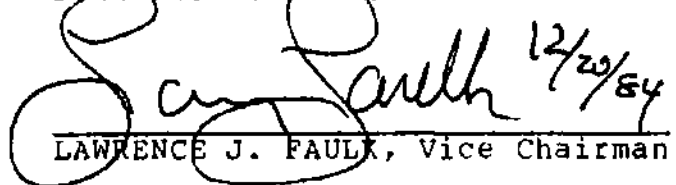
1 more than twenty days having elapsed from said service; and

2 The Board having received exceptions and denying same, and the
3 Board having considered the exceptions and denying same, and being
4 fully advised in the premises, NOW THEREFORE,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
6 decision containing Findings of Fact, Conclusions of Law and Order and
7 Dissenting Opinion, dated the 7th day of November, 1984, and
8 incorporated by reference herein and attached hereto as Exhibit A, is
9 adopted and hereby entered as the Board's Final Findings of Fact,
10 Conclusions of Law and Order herein.

11 DATED this 20th day of December, 1984

12 POLLUTION CONTROL HEARINGS BOARD

13  12/20/84
14 LAWRENCE J. FAULK, Vice Chairman
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16 (See dissenting opinion)

17 GAYLE ROTHROCK, Chairman
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-288

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MAUD BLETH,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 84-288

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a Notice of Violation and 425 civil penalty for violation of open burning regulations and laws, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk and Gayle Rothrock (presiding), on October 29, 1984, at Vancouver, Washington. The proceedings were informal. Written notes were made by the Board.

Appellant appeared and represented herself. Respondent appeared and was represented by its attorney, David Jahn.

Testimony was taken. Exhibits were admitted and examined.

Exhibit A

1 Argument was heard. From the testimony, evidence, and contentions of
2 the parties the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a
6 certified copy of its revised Regulation I, containing respondent's
7 regulations and amendments thereto, which are noticed.

8 II

9 On September 28, 1984, in the evening, appellant or member(s) of
10 her family allowed or caused an outdoor fire of newspapers and other
11 material at 5901 NE 72nd in Vancouver, Washington.

12 III

13 The fire was confined in a burn barrel sitting out by the driveway
14 and street. Fire District 5 telephoned respondent agency and
15 complained, requesting an air quality inspector go to the scene of the
16 fire.

17 IV

18 Respondent's inspector arrived at the fire site at 9:10 p.m. and
19 observed a smoldering fire with bluish smoke in a burn barrel. He
20 ascertained the name of the resident(s) there by examining the mailbox
21 and was then called out by the resident-appellant inquiring about his
22 business on her premises. They discussed the apparent open burning
23 violation and the allowable burn season. The autumn burn season does
24 not commence until October 1st each year.

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26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-288

Testimony by respondent indicated that the radio, newspaper and television media were notified of the burn season dates immediately before the season's commencement. On September 28, 1984, the appellant was issued, and signed, a field notice of violation of Section 400-035 of Regulation I of SWAPCA.

Y

Appellant asserts her niece started the fire, that the fire was small, and that she should not be held accountable for her niece's actions, while her niece was on her premises.

VI

Appellant did not have a permit to conduct open burning. Appellant indicated that she did not know exactly when there was a burn season in the area. Neither she nor her niece attempted to obtain permission to burn papers.

vii

On October 1, 1984, appellant was issued a formal notice of violation and assessed a \$25 penalty by respondent agency. On October 15, 1984, postal certification to respondent showed appellant was in receipt of the notice. From this appellant appealed to this Board on October 18, 1984.

VII

Appellant has received no prior violations of SWAPCA Regulation I.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 84-288

1 From these Findings the Board comes to these

2 CONCLUSIONS OF LAW

3 I

4 The Legislature of the State of Washington has enacted the
5 following policy on outdoor fires:

6 It is the policy of the state to achieve and maintain
7 high levels of air quality and to this end to
8 minimize to the greatest extent reasonably possible
9 the burning of outdoor fires. Consistent with this
policy, the legislature declares that such fires
should be allowed only on a limited basis under
strict regulation and close control. (RCW 70.94.740)

10 Pursuant to this and other legislative authority, the respondent has
11 adopted its Regulation I, Section 400-035, which provides in relevant
12 part:

13 No person shall ignite, cause to be ignited, permit
14 to be ignited, or suffer, allow, or maintain any open
15 fire within the jurisdiction of the Authority, except
16 as provided in this Regulation...(2) Open burning may
17 be done under permit: (b) No permit shall be issued
18 unless the Control Office is satisfied that: (i) No
practical alternate method is available for the
disposal of the material to be burned. (The
Authority has a written Open Outdoor Fire Policy
describing times, areas and kinds [of] permitted open
fires).....

19 II

20 It surely is not the Board's responsibility to tell a local air
21 pollution control agency how to perform its duties. But it has been
22 apparent for a long time to the Board that the method of publishing
23 the burn season regulations is not adequate. When the only public
24 notice of the burn seasons is by voluntary publication and broadcast
25 by the media, then confusion is created among residents of the county.

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-288

1 It is the duty of governmental regulatory agencies to make its
2 rules clear and understandable to the public. When agencies fail in
3 this duty, citizens should not be punished for failure to comply.
4 Richard Peters v. SCAPCA, PCHB No. 354 (1973).

5 III

6 The burden of proof in a case where a governmental agency has
7 issued a fine is on the agency to prove that the citizen violated the
8 law.

9 IV

10 It may be that it is a citizen's responsibility to keep abreast of
11 all the multitude of laws and regulations which govern his life but
12 surely it is also the responsibility of a regulatory governmental
13 agency to make its rules clear and understandable to its citizens.

14 The Board believes that SWAPCA should adopt the burn seasons as
15 part of their Regulation I and publish same; and (2) require the
16 inspectors to carry copies of this part of Regulation I with them for
17 easy distribution to the citizens; and (3) introduce this handbill in
18 all future proceedings before this Board.

19 The burn seasons have never been introduced in any of these
20 proceedings as evidence. In other words, the Board has never seen a
21 piece of paper that states the dates of the burn seasons.

22 V

23 Under the facts, the instant penalty should be vacated. The
24 public interest would be better served if efforts to inform citizens
25

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-288

1 of restrictions were more than perfunctory in matters so basic to the
2 management of households as open burning.

3 VI

4 Any Finding of Fact which should be deemed a Conclusion of Law is
5 hereby adopted as such.

6 From these Conclusions the Board enters this

7 ORDER

8 The notice of violation and \$25 civil penalty is vacated.

9 DONE this 7th day of November, 1984.

10 POLLUTION CONTROL HEARINGS BOARD

11  11/7/84
12 LAWRENCE J. FAULK, Vice Chairman
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26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-288

1 DISSENT TO PROPOSED ORDER - by GAYLE ROTHROCK

2 FINDINGS OF FACT

3 I

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5 certified copy of its revised Regulation I, containing respondent's
6 regulations and amendments thereto, which are noticed.

7 II

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9 her family allowed or caused an outdoor fire of newspapers and other
10 material at 5901 NE 72nd in Vancouver, Washington.

11 III

12 The fire was confined in a burn barrel sitting out by the driveway
13 and street. Fire District 5 telephoned respondent agency and
14 complained, requesting an air quality inspector go to the scene of the
15 fire.

16 IV

17 Respondent's inspector arrived at the fire site at 9:10 p.m. and
18 observed a smoldering fire with bluish smoke in a burn barrel. He
19 ascertained the name of the resident(s) there by examining the mailbox
20 and was then called out by the resident-appellant inquiring about his
21 business on her premises. They discussed the apparent open burning
22 violation and the allowable burn season. The autumn burn season does
23 not commence until October 1st each year.

24 Testimony by respondent indicated that the radio, newspaper and
25 television media were notified of the burn season dates immediately

26 DISSENTING OPINION
27 PCHB No. 84-288

1 before the season's commencement. The appellant was issued, and
2 signed, a field notice of violation of Section 400-035 of Regulation I
3 of SWAPCA.

4 V

5 Appellant asserts her neice started the fire, that the fire was
6 small, and that she should not be held accountable for her neice's
7 actions while her neice was on her premises.

8 VI

9 Appellant did not have a permit to conduct open burning.
10 Appellant indicated that she did not know exactly when there was a
11 burn season in the area. Neither she nor her neice attempted to
12 obtain permission to burn papers.

13 VII

14 On October 1, 1984, appellant was issued a formal notice of
15 violation and assessed a \$25 penalty by respondent agency. On October
16 15, 1984, postal certification to respondent showed appellant was in
17 receipt of the notice.

18 VII

19 Appellant has received no prior violations of SWAPCA Regulation I.

20 VIII

21 Any Conclusion of Law which should be deemed a Finding of Fact is
22 hereby adopted as such.

23 From these Findings the Board comes to these
24
25

26 DISSENTING OPINION
27 PCHB No. 84-288

1 CONCLUSIONS OF LAW

2 I

3 The Legislature of the State of Washington has enacted the
4 following policy on outdoor fires:

5 It is the policy of the state to achieve and maintain
6 high levels of air quality and to this end to
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8 the burning of outdoor fires. Consistent with this
9 policy, the legislature declares that such fires
10 should be allowed only on a limited basis under
11 strict regulation and close control. (RCW 70.94.740)

12 Pursuant to this and other legislative authority, the respondent has
13 adopted its Regulation I, Section 400-035, which provides in relevant
14 part:

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17 fire within the jurisdiction of the Authority, except
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19 be done under permit: (b) No permit shall be issued
20 unless the Control Office is satisfied that: (i) No
21 practical alternate method is available for the
22 disposal of the material to be burned. (The
23 Authority has a written Open Outdoor Fire Policy
24 describing times, areas and kinds [of] permitted open
25 fires)....

18 II

19 Respondent agency established that this regulation was, in fact,
20 violated. The burn season is a time during which general permission
21 to engage in limited outdoor burning of certain materials is granted
22 by the authority. However, the fire in question occurred before the
23 opening of the declared fall burn season. Appellant did not contest
24 either that an outdoor fire had occurred or that she or members of her
25 family had no permit to burn.

26 DISSENTING OPINION
27 PCHB No. 84-288

1 III

2 Ignorance of open burning regulations is no defense to a citation
3 of their violation. J.J. Welcome & Sons v. PSAPCA, PCHB No. 42 (1971).

4 IV

5 RCW 70.94.431 provides for the imposition of a civil penalty
6 against "any person who violates any of the provisions of chapter
7 70.94 RCW or any of the rules and regulations of the department or the
8 board." The violation of SWAPCA, Regulation I, Section 400-035, falls
9 within this language, and, therefore, assessment of a penalty in this
10 instance was lawful.

11 V

12 SWAPCA publicizes the period during which limited burning can be
13 conducted. Its program was well enough understood for a fire district
14 to complain about appellant's fire. There was no showing that
15 appellant was misled or misinformed by SWAPCA, even though appellant
16 felt she was treated rudely. The penalty of \$25 is substantial in
17 light of the nature and duration of this single violation. However,
18 in consideration of SWAPCA's purpose to secure compliance generally,
19 the amount of the penalty assessed is not manifestly unreasonable.

20 VI

21 Though under the facts the penalty should be upheld, SWAPCA's open
22 burning regulations do contain a certain amount of vagueness of
23 reference. In the highly regulated context of present day life, the
24 public interest would be served if stronger efforts to were made to
25 inform citizens of restrictions.

26 DISSENTING OPINION
27 PCHB No. 84-288

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The notice of violation and \$25 civil penalty is affirmed.

DONE this 7th day of November, 1984.


GAYLE ROTHEROCK, Chairman